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MEMORANDUM

TO: Interested Persons

FROM: Michael J. Sullivan, Director

SUBJECT: Reporting of Year-End Contributions

At the end of each year, the office receives a number of questions regarding the proper reporting of contributions¹ made near the end or beginning of a year. This situation typically occurs when a contributor mails or delivers a contribution late in the calendar year that the recipient committee receives or deposits early in the New Year. This memorandum explains how candidates and treasurers should report these contributions. Although questions often occur at the end of the calendar year because of contribution limitations, the reporting rules outlined in this memorandum apply to contributions received late in any reporting period.

I. The Basic Rule

A candidate or committee makes and receives a contribution when the contribution is **actually** delivered to, taken possession of or acquired by the candidate or political committee, e.g., the committee's treasurer or other authorized agent of the committee. The contribution should be reported in the reporting period that it is received. See M.G.L. c. 55, ss. 1 and 18. See also 970 CMR 1.04 (7).

(a) **Hand Delivery** - A candidate or political committee receives a contribution on the day it is actually hand delivered to **and** acquired by the candidate, treasurer or other authorized agent of a political committee.

Example: A contributor writes a check to a PAC for \$100 on December 31, 1998. The contributor hand delivers the check to the PAC's treasurer on the same day. The treasurer does not deposit the contribution until January 2, 1999. The PAC received the contribution on December 31, 1998;

¹ A "contribution" is defined by the campaign finance law as any "gift, subscription, loan, advance, deposit of money, or thing of value, except a loan of money to a candidate by a national or state bank made . . . in the ordinary course of business . . ." given "for the purpose of influencing the nomination or election" of a candidate "or for the purpose of promoting or opposing a [ballot question]." See M.G.L. c. 55, s. 1.



the day the contribution was delivered to and acquired by the committee's treasurer, even though the treasurer did not deposit the check until 1999.²

Example: A treasurer of a PAC writes a check for \$500 on December 31, 1998 to a candidate committee. The contribution is hand delivered to the candidate committee's treasurer on the same day. The contribution is not deposited until January 2, 1999. Both committees should report the contribution on their 1998 year end campaign finance reports, even though the check was deposited in 1999 by the candidate committee.

Example: A ward committee writes a check for \$250 on December 1, 1998 to a candidate committee. The check is hand delivered to the candidate on January 2, 1999. Both committees should report the contribution on their 1999 year end campaign finance report, even though the check is dated a month earlier.

(b) **Mail Delivery** - A candidate or political committee receives a mailed contribution on the day the candidate or political committee takes possession of or acquires the contribution.

Example: A contributor writes a check for \$75 on December 21, 1998 to a people's committee. The check is mailed on December 26, 1998 and received by the treasurer of the political committee at his home on December 30, 1998. The treasurer deposits the check on January 2, 1999. The contribution is received on December 30, the day the treasurer took possession of the contribution, even though the check was deposited in 1999.

Example: A contributor writes a check for \$500 on December 28, 1998, to a candidate committee. The check is mailed on December 31, 1998, to the committee's post office box. The postal service delivers the check to the committee's post office box on January 2, 1999. The contribution was received on January 2, 1999, the day when the committee actually had possession of the contribution, even though the envelope was postmarked December 31, 1998.

Example: A PAC writes a check for \$500 on December 21, 1998 to a candidate committee. The check is mailed on December 26, 1998 and received by the treasurer of the candidate committee on December 30, 1998. The check is deposited on January 2, 1999. Both committees should report the contribution on their year-end campaign finance reports, even though the check was deposited in 1999.

Example: A candidate committee writes a check for \$100 on December 22, 1998, to a PAC. The check is mailed on December 26, 1998 but not received by the PAC's treasurer until January 2, 1999. Unless the candidate committee knows that the contribution was actually received in 1999, the candidate committee should report the contribution on its year-end campaign finance report. *For contribution limitation purposes, however, the contribution was made in 1999 since the PAC actually received the contribution on January 2, 1999.*

² If a contributor "post dates" a contribution, the contribution is not deemed to have been received until the day the check is actually negotiable. For example, a check that is post dated January 5th is received on January 5th even if it was mailed or delivered prior to the New Year.

Important: If a candidate or treasurer does not check their mail daily (whether received at home, at work or at a post office box), they may use reasonable guidelines to determine when a contribution is received for reporting and contribution limitation purposes. For example, contributions delivered to a post office box may be considered received the day following the date of the postmark if mailed within the same city or state and two days following the date of the postmark if mailed from out of state. Such practices should be applied consistently and should be in writing.

II. Reporting and Recordkeeping

(a) **Non-depository committees:** Legislative candidate committees, political action committees, people's committees, ballot question committees and most municipal candidate committees file campaign finance reports in the non-depository system. Such committees simply need to keep in mind the basic rules outlined above when completing their campaign finance reports. Contributions should be reported, therefore, in the reporting period in which they were received or given. For their records, committee treasurers are advised to note on a photocopy of a contribution check that is received late in the year the actual date the contribution was received.

(b) **Depository committees:** Depository candidates and committees³ account for contributions on their January 20th year end report but disclose those contribution when depositing the checks into their depository bank. As a result, contributions received late in one year, and counted in that year for contribution limitation purposes, may quite properly be deposited and disclosed early in the subsequent year.

Example: A gubernatorial candidate committee receives a check for \$500 from an individual contributor on December 31, 1998. The same committee receives a second check for \$500 from the same individual contributor on January 2, 1999. Both checks are deposited on January 2, 1999 and are disclosed on the committee's February 5, 1999 report filed by its depository bank. The first \$500 contribution, however, will be accounted for on the committee's 1998 year-end report. For contribution limitation purposes, the first \$500 contribution will be attributed to calendar year 1998 while the second \$500 contribution will be attributed to calendar year 1999.

Important: The appearance of the two contributions on the February 5, 1999 Form CPF D106 suggests a possible excess contribution. In order to provide accurate disclosure, maintain complete records and avoid confusion, OCPF recommends that depository committee treasurers take one or more of the following steps in connection with contributions received late in the calendar year:

(a) On a photocopy of the contribution check make a note of the actual date the contribution was received by the committee.

(b) On the Form CPF D106 (List of Contributors) write the actual date the committee received the check.

³ Depository candidates and committees include statewide and county candidate committees, state party committees, governor's council committees and citywide candidate committees (other than school committee candidate committees) in Boston, Cambridge, Lowell, Springfield and Worcester. Such candidate and committees must deposit contributions with seven days after receipt. See M.G.L. c. 55, s. 19.

(c) On Schedule A of Form CPF D102, which is filed on or before January 20 of each year, report all contributions that were received late in the calendar year but deposited after December 31.

By taking these steps, depository committees will have records to document when a contribution was received. In addition, such committees will provide to the public and to the press a complete and accurate record of the contribution.

This memorandum is not intended to cover every situation regarding the reporting of year-end contributions. For further information or guidance, therefore, please contact OCPF.